Filed 3/28/19 P. v. Thompson CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. SETH MICHAEL THOMPSON, Defendant and Appellant.	C087064 (Super. Ct. No. 17F5033)

Defendant and two accomplices robbed a victim in his home at gunpoint. After pleading no contest to first degree residential robbery in concert and admitting to personally using a firearm during the offense, he was sentenced to a stipulated 13-year prison term, which included 10 years for the firearm enhancement.

Defendant's appointed counsel filed an opening brief setting forth the facts of the case and asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Finding no arguable error that would result in a disposition more favorable to defendant, we affirm.

I. BACKGROUND

We provide the following brief description of the facts and procedural history of defendant's case.[1] (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

During the early morning hours on September 11, 2017, defendant and another man forced open the front door of N.O's home in Olinda, California. N.O. was home at the time. Defendant entered the residence first while holding a black handgun. He ordered N.O. to the ground, yelling, " 'Where is your money at?' " N.O. gave defendant his wallet. Defendant took N.O.'s cellphone from his pants pocket.

At that point, a third man entered the house, and defendant and his cohorts took turns rummaging through N.O.'s house. Before leaving, they took various items of N.O's personal property, including a laptop, power tools, $400, eight knives, a bag of watches, and the recorder box of the home surveillance system. Defendant told N.O. that if he called the police, defendant would kill him and his family.

Defendant was charged with first degree burglary (Pen. Code, § 459—count 1),[2] first degree residential robbery (§ 211—count 2), grand theft of personal property (§ 487, subd. (a)—count 3), assault with a semi-automatic firearm (§ 245, subd. (b)—count 4), and two counts of dissuading a witness from reporting a crime (§ 136, subd. (b)(1)—counts 5 and 6). For counts 1, 2, 3, 5, and 6, it was alleged that defendant was armed with a firearm (§ 12022, subd. (a)(1)), and personally used a deadly or dangerous weapon (§ 12022, subd. (b)). For all counts, it was alleged he personally used a firearm (§ 12022.5, subd. (a)). And, for count 2, it was alleged that defendant personally used a firearm (§ 12022.53, subd. (b)) and acted in concert with two or more persons in a home

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[1] The parties stipulated to the preliminary hearing transcript as the factual basis for defendant's plea.

[2] Further undesignated statutory references are to the Penal Code.

invasion (§ 213, subd. (a)(1)(A)). The information further alleged that defendant had served two prior prison terms. (§ 667.5, subd. (b).)

In March 2018, defendant pleaded no contest to first degree residential robbery (count 2), and admitted that he acted in concert during a home invasion (§ 213, subd. (a)(1)(A)), and that he personally used a firearm during the offense (§ 12022.53, subd. (b)) in exchange for a stipulated 13-year state prison term and dismissal of the remaining charges, allegations, and several other pending cases. The court sentenced him to the stipulated 13-year term, consisting of the low term of three years for the home invasion robbery plus 10 years for the firearm enhancement.

The court awarded defendant 175 days of actual credit and 26 days of conduct credit (§ 2933.1) for a total of 201 days of credit. The court imposed a $300 restitution fine (§ 1202.4, subd. (b)), a $300 parole revocation restitution fine, suspended unless parole was revoked (§ 1202.45), a $40 court operations assessment (§ 1465.8), a $30 criminal conviction assessment (Gov. Code, § 70373), and $3,575 in victim restitution. Defendant timely appealed. The court denied his request for a certificate of probable cause.

II. DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief setting forth the facts of the case and requesting that this court review the record to determine whether there are any arguable issues on appeal. (*Wende*, *supra*, 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a supplemental brief asking us to strike the 10-year personal use of a firearm enhancement imposed under section 12022.53, subdivision (b). To support his request, he cites Senate Bill No. 620 (2017-2018 Reg. Sess.), which went into effect January 1, 2018. (Cal. Const., art. IV, § 8, subd. (c); Gov. Code, § 9600, subd. (a); *People v. Camba* (1996) 50 Cal.App.4th 857, 865 [“ ‘ “Under the California Constitution,

a statute enacted at a regular session of the Legislature generally becomes effective on January 1 of the year following its enactment except where the statute is passed as an urgency measure and becomes effective sooner" ' "]; *People v. Hurlic* (2018) 25 Cal.App.5th 50, 54.)

Senate Bill No. 620 amended sections 12022.5 and 12022.53 to grant trial courts the discretion to strike firearm enhancements imposed under those statutes. (§§ 12022.5, subd. (c) & 12022.53, subd. (h), as amended by Stats. 2017, ch. 682, §§ 1-2.) Prior to Senate Bill No. 620, trial courts had no discretion to strike a firearm enhancement. (*People v. Thomas* (1992) 4 Cal.4th 206, 208, 212.) While Senate Bill No. 620 does apply retroactively to all nonfinal judgments (*People v. Woods* (2018) 19 Cal.App.5th 1080, 1090-1091), that does not mean remand for resentencing is warranted here.

As previously noted, defendant entered into the plea agreement in March 2018—nearly three months *after* Senate Bill No. 620 took effect. Thus, the new law was part of the legal landscape when defendant agreed to the stipulated 13-year prison term, including the 10-year firearm enhancement under section 12022.53, subdivision (b).

This is not a case, then, where a change in the law that ameliorates punishment was passed *after* a defendant had negotiated and executed a plea bargain. Under those circumstances, such a beneficial change arguably would apply to a case still pending on appeal unless the parties' plea agreement included a provision expressly stating that the agreement would not be subject to future changes in the law. (*Harris v. Superior Court* (2016) 1 Cal.5th 984, 991 [courts will not amend a plea agreement to add " 'an implied promise [that] the defendant will be unaffected by a change in the statutory consequences attending his or her conviction' "]; *Doe v. Harris* (2013) 57 Cal.4th 64, 66 [unless a plea agreement contains a term requiring the parties to apply only the law in existence at the time the agreement is made, the general rule in California is that a plea agreement will be deemed to incorporate and contemplate not only the existing law but the reserve power of

the state to amend the law or enact additional laws for the public good and for public policy reasons].)

Here, we presume the parties, including the court, were aware of Senate Bill No. 620 and its newly granted discretion to strike firearm enhancements when defendant agreed to plead no contest in exchange for the stipulated sentence that included the 10-year firearm enhancement under section 12022.53. (*Swenson v. File* (1970) 3 Cal.3d 389, 393 [parties are presumed to know and to have had in mind all applicable laws when an agreement is made]; *People v. Hurlic, supra,* 25 Cal.App.5th at p. 57 ["plea agreements are, at bottom, 'a form of contract,' and their terms, like the terms of any contract, are to be enforced"].) Because the new law was "on the books" at the time the plea agreement was negotiated and executed, and defendant agreed to a specific sentence that did not account for the discretion to strike the firearm enhancement under Senate Bill No. 620, but rather included 10 years for the firearm enhancement as part of the deal, his appeal is rightly characterized as challenging nothing more than a stipulated sentence that was an integral part of the plea bargain. (*People v. Panizzon* (1996) 13 Cal.4th 68, 78 ["by contesting the constitutionality of the very sentence he negotiated as part of the plea bargain, defendant is, in substance, attacking the validity of the plea"].) The absence of a certificate of probable cause, however, bars such an appeal. (§ 1237.5 [a defendant who seeks to appeal following a guilty or no contest plea must first file with the trial court a sworn, written statement showing reasonable constitutional, jurisdictional or other grounds going to the legality of the proceedings and obtain a certificate of probable cause from the trial court]; *Panizzon, supra,* at p. 78 [because "the sentence [the] defendant received was part and parcel of the plea agreement he negotiated with the People . . . the statutory certificate [of probable cause] requirement applies"].)

In this case, the trial court denied defendant's request for a certificate of probable cause. Therefore, he cannot challenge the validity of the plea, including the 10-year term expressly agreed to for the firearm enhancement.

III. DISPOSITION

The judgment is affirmed.

/S/

RENNER, J.

We concur:

/S/

RAYE, P. J.

/S/

HOCH, J.